

SERVED: December 24, 1996

NTSB Order No. EA-4511

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 19th day of December, 1996

_____)	
LINDA HALL DASCHLE,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-14609
v.)	
)	
NORMAN V. MAHAFFEY,)	
)	
Respondent.)	
_____)	

ORDER DENYING RECONSIDERATION

Section 821.57(d) of the Board's rules of practice states, with respect to emergency appeals such as the one in this docket, that "[t]he only petitions for reconsideration...of an order which the Board will entertain are petitions based on the ground that new matter has been discovered." In the context of this proceeding, in which the respondent's appeal was dismissed by the Board for respondent's failure to file a timely appeal brief, see NTSB Order EA-4492 (served October 15, 1996), the rule obligated the respondent to identify some factor not previously considered that might establish error in our prior determination that good cause to excuse the procedural default had not been shown.

Respondent's request for reconsideration, opposed by the Administrator, does not establish error in Order EA-4492's conclusion that respondent's failure to file a timely appeal brief was not legally excusable. Rather, in addition to

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including various observations having no relevance to the matter of good cause, respondent simply renews his view that because he filed the brief as soon as he appreciated that one needed to be filed, namely, on September 19, two days after it was due, his brief should have been accepted. The issue, however, is not whether respondent acted with dispatch once his mistake was discovered, but whether the mistake was justified in the first place. As we previously ruled, it was not. Not only had the Board provided him a copy of its procedural rules when the matter was docketed, the law judge told him in person at the end of the hearing on September 10 that the brief needed to be filed within five days.¹ In light of this written and oral advice, respondent's apparent belief that he should not be held responsible for missing the deadline is unavailing.

ACCORDINGLY, IT IS ORDERED THAT:

The petition for reconsideration is denied.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above order.

¹The law judge meant within five days of filing a notice of appeal, which had to be filed within two days, and which respondent in fact did on September 12. The lack of precision in this connection did not prejudice the respondent, however, because he did not file a brief within the next three or five days.